

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 272 of 1999

in

SPECIAL CIVIL APPLICATION No 10532 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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SAMRATHDAN DEJIBHAI

Versus

STATE OF GUJARAT

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Appearance:

MR MUKUL SINHA for Appellants

MR SP HASURKAR for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 3, 4, 5, 6

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CORAM : MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE A.L.DAVE

Date of decision: 06/05/99

ORAL JUDGEMENT

Admitted. Mr.S.P.Hasurkar waives service of notice on behalf of the respondents. In the facts and

circumstances of the case, the matter is taken up for final hearing today.

2. This appeal is directed against a part of interlocutory order passed by the Learned Single Judge in SCA 10532 of 1998 on 4.2.99 by which interim relief was refused to the appellants though it was granted to some of the petitioners.

3. A petition was filed by eight petitioners under Article 226 of the Constitution for an appropriate writ direction or order directing the respondent authorities to issue orders of promotion of the petitioners as Police Sub Inspectors who were selected for the said post and by treating them for all purposes on par with other Police Sub Inspectors by quashing and setting aside the order dated 5.12.98. Interim prayer was also made during the pendency and disposal of the petition that the authorities may be directed to send the petitioners for training of Police Sub Inspectors and on successful completion of training period to confer the benefits as are available to other Police Sub Inspectors.

4. The case of the petitioners was that they were appointed as Police Constables and were working as Assistant Intelligence Officers in CID (IB) Branch. Though they were originally appointed as Police Constables, they were sent on deputation on "one step promotion basis" i.e. as Head Constable to CID (IB) as redesignated. It was asserted by them that they were found eligible for promotion to the post of Police Sub Inspector and hence were permitted to appear at the written test as well as oral test and they had cleared both of tests. The next step was to send such persons for practical training. When that question arose before the authorities, the Director General and Inspector General of Police, Gujarat State respondent no.2 was of the opinion that under the Gujarat Police Manual, 1975 promotion to the post of Sub-Inspector of Police can be made in accordance with the provisions of the Manual. The relevant rules, which are in the nature of administrative instructions, provide that Head Constables who had completed five years of service can be treated as eligible to be considered for the promotional post of Sub Inspectors and after completion of written test, oral test as well as training, if they are found fit they can be appointed in accordance with law. Since the respondent no.2 was of the view that the petitioners had not fulfilled both the conditions; (1) promotion as Head Constables; and (2) completion of eight years as Head Constables,

they cannot be treated as eligible and hence though written test as well as oral test were over and the petitioners had successfully undergone both of them, they were not sent for practical training. The said action was challenged by the petitioners in the above petition.

5. After hearing the parties, the Learned Single Judge, relying on a communication Annexure "O" to the petition granted relief to three petitioners. It was observed:

"The said communication has in no uncertain terms, offered incentive by saying that after five years service on deputation the incumbent will be permitted to take the Sub Inspector's examination."

6. The Learned Single Judge noted that it appeared that the respondent no.2 did not agree with the decision taken by his predecessor and hence refused permission to the petitioners to take necessary training.

7. It was argued on behalf of the respondent authorities that the incentive which was offered was only with regard to permission and it had nothing to do with sending the petitioners for training as PSI and as they were not eligible and hence could not be sent for training. Reliance was placed on certain decisions before the Learned Single Judge.

8. The Learned Single Judge after considering rival contentions of the parties, observed in Para 5 as under:-

"Therefore, by way of interim relief it is directed that the respondents shall permit the petitioners Nos.3,6 and 8. i.e. those who have been promoted as head constable in their parent department to take necessary training and if otherwise found fit for promotion shall promote them as sub-inspectors. It is however clarified that the promotion given to the petitioners Nos.3,6 and 8 pursuant to this order shall be ad hoc and subject to the final order that may be made by this Court. Further, said petitioners nos.3,6 and 8 shall not be entitled to further promotion from the post of sub inspector if they are so promoted on the basis of such promotion without express order of this Court. Interim relief to rest of the petitioners is refused."

9. From the above portion, it is clear that interim

relief was granted in favour of petitioner nos.3,6 & 8 and they were ordered to be sent for training subject to the final order which may be made by the Court. It was also clarified that they will not be entitled for further promotion from the post of Sub-Inspector even if they were promoted without express order of the Court. The interim relief to the rest was refused by the Learned Single Judge.

10. At that stage, a prayer was made on behalf of the AGP to stay the operation of the order and the Learned Single Judge granted stay for a period of five days from the date of the order. It is stated by Mr.Hasurkar that the above order is not challenged so far by the State Government.

11. Out of the remaining five petitioners, four appellants i.e. original petitioner nos.1,2,4 & 5 have filed present LPA. Mr.Mukul Sinha, Learned Counsel for the appellants contended that when the petition was admitted, obviously the learned Single Judge was of the view that prima facie case was made out. Rule was, therefore, issued. Regarding interim relief, the Counsel submitted that interim relief was granted by the Learned Single Judge in favour of petitioner nos.3,6 & 8. Though nothing was stated in the impugned order as to why interim relief was refused qua present appellants were concerned, according to the Counsel, it was not granted probably in view of the fact that the appellants were not Head Constables in the parent department and were granted accelerated promotion in CID (IB). Mr.Sinha submitted that if under the relevant rules both the conditions were required to be satisfied for the purpose of treating a person eligible to promotion to the post of Police Sub Inspector; i.e.(1) Promotion as Head Constable and (2) Completion of five years of service, they were not fulfilled even by petitioner nos.3,6 & 8. Yet the Learned Single Judge granted interim relief in their favour considering a letter - communication Annexure "O" dated 26.11.90. In the said Annexure, it was stated that armed-unarmed police constables - Head Constables will be given accelerated promotion in one step and that if they would complete a period of five years on deputation, they will be permitted to appear in the departmental examination for Sub Inspector of Police. Admittedly, the petitioner nos.3,6 & 8 have not completed 5 years after they were permitted as Head Constables. In fact, looking to the affidavit in reply of A.K.Bhargava, Additional DGP (Administration), in Para 5 & 6, the petitioner no.3 was promoted as Head Constable on 9.8.95 (wrongly shown as 9.8.98) and Mohammed Hanif Vora petitioner no.8 on

24.11.95. Thus neither of them had completed five years. Regarding petitioner no.6, it was stated that he was originally appointed as Constable. However, at his own will, he got his cadre changed to that of Wireless Operator and got enhanced promotion for better prospects. The Learned Single Judge was of the view that though they had not completed five years on promotional post of Head Constables, they should be considered eligible for promotional post of PSI and can be sent for training by invoking the doctrine of estoppel as reflected in a communication dated 26.12.90. The Learned Counsel submitted that the same principle would apply to the case of the appellants also.

12. In our opinion, the contention is well founded. It is true that the present appellants got accelerated promotion in view of their showing willingness to go to CID (IB) but Annexure "O" is clear and provides for accelerated promotion as Head Constables and after completion of five years as Head Constable on deputation, they can be permitted to appear at the departmental examination conducted for the post of Sub Inspector of Police. As stated in the petition, all the appellants were permitted to appear at the written test as well as oral test and they have successfully undergone them. In this view of the matter, in our view, the Learned Single Judge, by refusing interim relief in favour of the appellants, has committed an error of law which requires to be corrected.

13. In the result, the appeal is allowed and the respondent authorities are directed to extend all the benefits which are ordered to be extended by the Learned Single Judge in Para 5 of the order dated 9.2.99. It is however, clarified that the said order would be subject to the final outcome of Special Civil Application No. 10532 of 1998. It was stated that the training has already commenced and it may not be proper to permit the appellants to join such training at the mid-way. It would also not be appropriate to direct the authorities to allow the appellants to give incomplete training. We see substance in the submission. It is, therefore, directed that the respondents will permit the appellants to impart such training in the next batch.

14. It is open to the authorities to request the learned Single Judge to take the main matter for final disposal in view of urgency and important question which is agitated. As and when such a prayer would be made the Learned Single Judge would consider the same and take appropriate action. The appeal is accordingly allowed to

the extent indicated above. There shall be no order as to costs.

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